

Internal Revenue Service

Department of the Treasury

Index No: 402.08-00

Washington, DC 20224

Contact Person:

199914046

Telephone Number:

In Reference to:

Date: OP:E:EP:T:3

ATTN:

JAN 12 1999

LEGEND

Plan X:

Union M:

Company N:

Dear :

This is in response to your request for a ruling dated , which concerns whether certain supplemental payments paid from Plan X to retired participants or their beneficiaries are eligible rollover distributions under section 402(c)(4) of the Internal Revenue Code (the "Code"). In connection with your request, your authorized representative submitted the facts and representations described below.

Plan X is a jointly-trusted, collectively-bargained, multi-employer, defined benefit pension plan that provides pension benefits to retired participants pursuant to collectively bargained wage agreements negotiated between various unions associated with Union M and various employers. Plan X was effective on .

Your authorized representative asserts that Plan X is qualified under section 401(a) of the Code.

Plan X presently covers approximately active employees at companies. Most of the Plan X participants are employed by either Company N or by a trucking company as either truck drivers or warehousemen/package handlers.

Plan X currently pays benefits to retirees and/or their beneficiaries. The monthly benefits range from less than \$500 to more than \$2000.

Plan X provides that benefits thereunder will be paid as either joint and survivor annuities or, with appropriate spousal consent(s), life annuities.

Page 2

Prior to 1997, the Trustees of Plan X have authorized "thirteenth" or "supplemental" checks using various formulas to provide higher supplements to retirees who receive lower monthly benefits. For example, in , \$1,000,000.00 was divided among all retirees and beneficiaries who received benefits as of December 31, . The formula provided that each payee or distributee received one point for each full year that he or she had either been retired or had been receiving survivor benefits and one point for each full \$100 below a monthly benefit level of \$2000. Each point was worth \$19.57.

In , 1997, the Trustees of Plan X authorized the payment of a "supplement" to all retired participants and their beneficiaries payable as soon as administratively feasible. The "supplement" took the form of a one-time increase in benefits weighted toward those payees or distributees who received the lowest annual pensions. The Trustees authorized a "supplement" of \$1200 for those participants who retired prior to 1970. The supplement was \$800 for those individuals who retired between 1970 and 1979. Finally, the "supplement" was \$500 for those individuals who retired between 1980 and 1995. These amounts have been revised to comply with the 10 percent and \$750 limitations found in regulations cited below.

Based on the above facts and representations, you, through your authorized representative, request the following letter ruling:

The supplements authorized in June, 1997, paid to annuitants under Plan X in the form of a one-time increase in benefits, referenced above, are not "eligible rollover distributions" under section 402(c)(4) of the Code.

With respect to your ruling request, section 402(c)(4) of the Code generally provides that the term "eligible rollover distribution" means any distribution to an employee of all or a portion of the balance to the credit of the employee in a qualified plan except that such term does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or for a specified period of at least ten years. This section further provides that the term also does not include a distribution required under section 401(a)(9).

Section 1.402(c)-2, Q&A-5(a) of the Federal Income Tax Regulations (the "regulations") provides that whether a series of

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Page 3

payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv) of the Code, without regard to contingencies or modifications that have not yet occurred.

Section 1.402(c)-2, Q&A-5(c) of the regulations provides that if the amount of the payments changes so that subsequent payments are not substantially equal to prior payments, a new determination must be made as to whether the remaining payments are substantially equal periodic payments made over the requisite period.

Section 1.402(c)-2, Q&A-6(a) of the regulations provides that a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution.

Section 1.402(c)-2, Q&A-6(b)(2) of the regulations provides that a supplemental payment from a defined benefit plan to annuitants, for example, retirees or beneficiaries, will be treated as part of a series of substantially equal payments, rather than as an independent payment, provided that: (1) the supplement is a benefit increase for annuitants; (2) the amount of the supplement is determined in a consistent manner for all similarly situated annuitants; (3) the supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and (4) the aggregate supplement is less than or equal to the greater of ten percent of the annual rate of payment for the annuity, or \$750 (or any higher amount prescribed by the Commissioner in revenue rulings, notice and other published guidance).

The monthly distributions paid to retirees and beneficiaries under Plan X as either joint and survivor annuities or life annuities constitute a series of substantially equal periodic payments. The supplements, referenced above, which are the subject matter of this letter ruling, are only payable in connection with the payment of the annuities to retirees or their beneficiaries and are designed to augment the value of the annuities. Furthermore, your authorized representative asserts that the amount of the supplements does not exceed the limitations of section 1.402(c)-2, Q&A-6(b)(2) of the regulations for any annuitant, and the

76

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Page 4

supplements are paid from a defined benefit plan. Based on these facts, the supplements will be treated as part of a series of substantially equal periodic payments made over the requisite period under section 402(c)(4) of the Code.

Accordingly, based on the above facts and representations, we conclude as follows:

The supplements authorized in June, 1997, paid to annuitants under Plan X in the form of a one-time increase in benefits, referenced above, are not "eligible rollover distributions" under section 402(c)(4) of the Code.

This ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

Sincerely,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3